



# Oregon

Tina Kotek, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

May 2, 2023

CERTIFIED MAIL No. 7018 1830 0001 5906 2902

Providence Health & Services – Oregon  
Dbas Providence Portland Medical Center  
c/o CT Corporation System  
780 Commercial Street SE, Suite 100  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-NWR-2022-128

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a \$8,800 civil penalty for operating electrical power generators at your Portland Medical Facility at 4805 NE Glisan St., Portland, Oregon, without a valid Air Contaminant Discharge Permit (ACDP) from DEQ. The violation occurred when the previous General ACDP (AQGP-018) you were assigned to for your generators expired and you failed to apply for reassignment once DEQ renewed and reissued the permit. In addition, you failed to timely submit your 2022 annual report for your boilers, in violation of your boiler ACDP (General ACDP AQGP-011).

DEQ issued this penalty because operating your generators without an ACDP is a serious violation of Oregon law. ACDPs include emissions limits, monitoring and reporting requirements to ensure that emissions generating equipment do not emit air contaminants at levels that may harm public health and the environment. Diesel generators emit relatively high levels of nitrogen oxides, carbon monoxide, particulate matter and sulfur, all air pollutants that, when emitted in excess, can negatively impact public health and the environment.

In addition, annual reports are an important mechanism for DEQ to determine whether sources of air contaminants are operating within the conditions and limits of permits. Without the report, DEQ is unable to determine the compliance status of your boilers to ensure emissions are within permitted levels.

Included in Section IV of the attached Notice is an order requiring that you, within 30 days of the order becoming final, submit a complete application for assignment to AQGP-018 and a 2022 annual report for the boilers to DEQ.

You can pay the penalty by sending a check or money order to the address below. If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232  
Via email – [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a portion of your penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Jenny Root at 503-229-5874.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: Elaine Go, Northwest Region, DEQ  
Chris Moore, Northwest Region, DEQ  
Josh Alexander, Northwest Region, DEQ  
Lisa Ball, Northwest Region, DEQ  
Don Hendrix, AQ, HQ, DEQ  
Accounting, DEQ  
Tyler Anderson, Director Facilities Engineering, Providence Portland Medical Center  
4805 NE Glisan St., Portland, OR 97213

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 PROVIDENCE HEALTH & SERVICES - ) ASSESSMENT AND ORDER  
5 OREGON, an Oregon nonprofit corporation, )  
6 doing business as PROVIDENCE )  
7 PORTLAND MEDICAL CENTER, ) NO. AQ/ACDP-NWR-2022-128  
8 an assumed business name, )  
9 Respondent. )

10 I. AUTHORITY

11 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and  
12 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)  
13 Chapter 340, Divisions 011, 012, 200, 214 and 216.

14 II. FINDINGS OF FACT

15 1. Respondent owns and operates a medical services hospital at 4805 NE Glisan  
16 Street, Portland, Oregon as "Providence Portland Medical Center" (the Facility).

17 2. At the Facility, Respondent operates three Caterpillar diesel-fired dispatchable  
18 electrical power generators with each having a rated capacity of 2,000 kilowatts (kW).

19 3. Pursuant to OAR 340-216-0020(3), no person may construct, install, establish,  
20 develop or operate any air contaminant source listed in OAR 340-216-8010 without first  
21 obtaining an Air Contaminant Discharge Permit (ACDP) from the Oregon Department of  
22 Environmental Quality (DEQ) (except for operations in Lane County) or Lane Regional Air  
23 Protection Agency (LRAPA) (operations in Lane County). No person may continue to operate an  
24 air contaminant source if the ACDP expires, or is terminated, denied, or revoked; except as  
25 provided in OAR 340-216-0082, which requires that the owner or operator submit either a timely  
26 and complete permit application for renewal or an application for a different type of permit that  
27 authorizes operation of the air contaminant source.

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1 4. Table 1 of OAR 340-216-8010, Part B, Source Category 27 requires an ACDP for  
2 facilities that conduct electrical power generation from combustion, excluding units used  
3 exclusively as emergency generators and units less than 500 kW.

4 5. The dispatchable electrical power generators at the Facility are not used exclusively  
5 as emergency generators.

6 6. In 2011, the Department of Environmental Quality (DEQ) issued General ACDP  
7 AQGP-018 (2011 AQGP-018 or the 2011 Permit) for qualifying facilities that conduct electrical  
8 power generation. On August 25, 2011, DEQ assigned the Facility to the 2011 Permit as source  
9 number: 26-0136-18-01. 2011 AQGP-018 expired on August 1, 2021.

10 7. According to OAR 340-216-0040(2)(c), DEQ must receive an application for  
11 reassignment to a General ACDP within 30 days prior to expiration of the General ACDP.

12 8. On April 15, 2022, DEQ renewed and reissued AQGP-018 (2022 AQGP-018 or  
13 the 2022 Permit)

14 9. To date, since the 2011 Permit expired, Respondent has not submitted an  
15 application to DEQ for assignment to the 2022 Permit or submitted any other ACDP application  
16 to DEQ to operate the dispatchable electrical power generators at the Facility, yet Respondent  
17 has continued to operate the generators.

18 10. Respondent also operates one or more natural gas boilers (the boilers) at the  
19 Facility.

20 11. On October 10, 2017, the Department of Environmental Quality (DEQ) assigned  
21 Respondent's boilers to General ACDP AQGP-011 (AQGP-011) as source number 26-1804-11-  
22 01. AQGP-011 was in effect at all material times.

23 12. AQGP-011 authorizes Respondent to discharge air contaminants from processes  
24 and activities related to operation of boilers, in accordance with the requirements, limitations and  
25 conditions in AQGP-011.

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1 ACDP, whichever is applicable. A complete application includes a complete application form,  
2 and any applicable permit fees (Table 2 of OAR 340-216-8020);

3 3. Within 30 days of this order becoming final by operation of law or on appeal,  
4 submit a complete 2022 annual report for operation of the boilers during the 2022 calendar year, to  
5 DEQ; and

6 4. Submit the required ACDP application for the generators and 2022 annual report for  
7 the boilers to: **AQ Permit Coordinator, DEQ Northwest Region, 700 NE Multnomah Street,  
8 Suite 600, Portland, Oregon 97232**

9 If you do not file a request for hearing as set forth in Section V below, your check or  
10 money order must be made payable to "**Department of Environmental Quality**" and sent to the  
11 **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

#### 12 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

13 You have a right to a contested case hearing on this Notice, if you request one in writing.  
14 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
15 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
16 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
17 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
18 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
19 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite  
20 600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to

21 [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge employed by the Office of  
22 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
23 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
24 attorney at the hearing, however you are not required to be. If you are an individual, you may  
25 represent yourself. If you are a corporation, partnership, limited liability company,  
26 unincorporated association, trust or government body, you must be represented by an attorney or  
27 a duly authorized representative, as set forth in OAR 137-003-0555.

1 Active-duty service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll-free telephone number.

6 If you fail to file a timely request for hearing, the Notice will become a final order by  
7 default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing  
8 but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be  
9 attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3).  
10 DEQ designates the relevant portions of its files, including information submitted by you, as the  
11 record for purposes of proving a prima facie case.

12  
13 5/2/2023

14 Date

13 

14 Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Operating an air contaminant source listed in OAR 340-216-8010, Part B, source category #27 without first obtaining an ACDP from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(3).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent should have been operating the generators under a General Air Contaminant Discharge Permit and is not listed under another penalty matrix.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent has operated the generators without an ACDP from DEQ from at least August 2, 2021, to present.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from



the standard of care a reasonable person would observe in that situation. Respondent was notified by DEQ in a September 7, 2021, letter; by email on September 16, 2022; and in a Pre-Enforcement Notice on October 24, 2022, that it needed to complete forms to re-apply for assignment to the General ACDP. In addition, DEQ provided Respondent with an ACDP renewal application on multiple occasions. By continuing to fail to apply for assignment to the renewed General ACDP or to apply for another ACDP, Respondent has consciously disregarded a substantial and unjustifiable risk that Respondent would continue, after being notified of the violation, to operate the Facility without an ACDP and in violation of the law. Disregarding this risk constitutes a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2, according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). To date, Respondent has not submitted a current ACDP application to DEQ to operate its generators.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ does not charge a fee to renew assignment to a General ACDP.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 4 + 8 + 2)] + \$0  
= \$2,000 + (200 x 14) + \$0  
= \$2,000 + \$2,800 + \$0  
= \$4,800

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 2: Failing to submit to DEQ, the 2022 annual report for Respondent's boilers, in violation of Condition 9.2 of AQGP-011 and OAR 340-214-0114(1) and (2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates the boilers under a General Air Contaminant Discharge Permit and is not listed under another penalty matrix.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by Respondent and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent failed to submit one (2022) annual report.

"M" is the mental state of the Respondent and receives a value of 8 pursuant to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Condition 9.2 of AQGP-011 expressly requires Respondent to submit an annual report for operation of its boilers by February 15<sup>th</sup> of each year. On May 1, 2019, DEQ issued Respondent a Warning

Letter with Opportunity to Correct for failing to submit the 2018 annual report to DEQ by the February 15, 2019, due date. On April 29, 2022, DEQ issued Respondent a Pre-Enforcement Notice for failing to submit the 2021 annual report to DEQ by the February 15, 2022, due date and reminded Respondent about the missing 2021 annual report and other missing reports in a May 10, 2022, email. By failing to submit the 2022 annual report to DEQ timely after repeatedly receiving notices from DEQ regarding late reporting, Respondent has consciously disregarded a substantial and unjustifiable risk that it would continue to violate the reporting requirements of the Permit and Oregon's air quality regulations. Given DEQ's previous and ongoing communication with Respondent regarding late or missing annual reports, continuing to disregard this risk constitutes a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). To date, Respondent has not submitted a 2022 annual report for the boilers to DEQ.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as any economic benefit derived is likely to be de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 8 + 2)] + \$0$   
 $= \$2,000 + (200 \times 10) + \$0$   
 $= \$2,000 + \$2,000 + \$0$   
 $= \$4,000$